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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,633	12/30/2003	Richard E. Downey	380-166 II	6891
1009	7590	09/20/2006	EXAMINER	
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			SNIDER, THERESA T	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/748,633

Applicant(s)

DOWNEY ET AL.

Examiner

Theresa T. Snider

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/21/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because '72' is disclosed on page 9, line 2 as a pulley however in figure 4 it does not appear to be directed to a pulley. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 42 (page 8, line 11), 44, 46(page 8, line 12), 60(page 8, line 21) and 98(page 10, line 17). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of

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the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the agitator section including more than two agitators(claim 4) and the power transmitting means from the suction generator to the first rotary agitator including a belt and gear box assembly(claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. The disclosure is objected to because of the following informalities:

Exemplary of such:

Page 3, line 3, the status of the copending application should be updated.

Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: it is unclear as to where is disclosed the agitator section includes more than two agitators(claim 4).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Exemplary of such:

Claim 5, line 1, 'said first rotary agitator' lacks proper antecedent basis. Should the claim be dependent from 2 rather than 1?

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Claim 28, should include a statement in the body of the claim as to when the 'goal' of the preamble is achieved; what step improves the cleaning efficiency?

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, 5-6, 10-14, 17-19, 22 and 28-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nordeen et al..

Nordeen et al. discloses a nozzle assembly including a base section and an agitator section pivotally mounted to the base section (fig. 2, #11, fig. 4, #16, col. 2, lines 13-14).

With respect to claims 1 and 29, Nordeen et al. discloses a canister assembly pivotally mounted to the base section (fig. 4, #12).

Nordeen et al. discloses a suction generator (fig. 2, #14).

Nordeen et al. discloses a dirt collector (col. 1, lines 51-52).

With respect to claims 2, 19 and 22, Nordeen et al. discloses the agitator section including a housing and rotary agitator (fig. 4, #29,24).

With respect to claim 5, Nordeen et al. discloses the agitator section pivoting about a longitudinal axis (fig. 1, #4).

With respect to claim 6, Nordeen et al. discloses the base section including at least one ground engaging wheel (fig. 4, #19).

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With respect to claim 10, Nordeen et al. discloses the canister assembly including a handle (fig. 1, #13).

With respect to claims 11 and 18, Nordeen et al. discloses means for biasing the agitator section toward a surface (fig. 4, #25).

With respect to claim 12, Nordeen et al. discloses at least one spring for biasing the agitator section toward a surface (fig. 4, #25).

With respect to claims 13-14, Nordeen et al. discloses a belt to transmit power from the generator to the agitator (fig. 4, #30).

With respect to claim 28, Nordeen et al. discloses a main housing including a plurality of wheels (fig. 2, #11,23,19).

With respect to claim 28, the apparatus of Nordeen et al. inherently provides the claimed method.

10. Claims 1-2, 5-6, 10-13, 17-19, 22 and 28-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wegelin et al..

Wegelin et al. discloses a nozzle assembly including a base section and an agitator section pivotally mounted to the base section (fig. 2A, #56,53).

With respect to claims 1 and 29, Wegelin et al. discloses a canister assembly pivotally mounted to the base section (fig. 2A, #30).

Wegelin et al. discloses a suction generator (fig. 2A, #42).

Wegelin et al. discloses a dirt collector (fig. 2A, #31).

With respect to claims 2, 19 and 22, Wegelin et al. discloses the agitator section including a housing and rotary agitator (fig. 2A, #53,63).

With respect to claim 5, Wegelin et al. discloses the agitator section pivoting about a longitudinal axis (fig. 2A, #54).

With respect to claim 6, Wegelin et al. discloses the base section including at least one ground engaging wheel (fig. 2A, #60).

With respect to claim 10, Wegelin et al. discloses the canister assembly including a handle (fig. 1, #20).

With respect to claims 11 and 18, Wegelin et al. discloses means for biasing the agitator section toward a surface (col. 5, lines 22-35).

With respect to claim 12, Wegelin et al. discloses at least one spring for biasing the agitator section toward a surface (col. 5, lines 24-25).

With respect to claim 13, Wegelin et al. discloses means for transmitting power from the generator to the agitator (col. 4, lines 43-46).

11. Claims 17 and 28 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sparklin.

Sparklin discloses a main housing including a plurality of wheels (fig. 1, #10, unnumbered elements above #50 and to right of #24).

Sparklin discloses a suction generator (page 1, line 43).

Sparklin discloses an agitator section pivotally mounted to the housing (fig. 4, #24,23,20).



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With respect to claim 28, the apparatus of Sparklin inherently provides the claimed method.

12. Claims 17-18 and 28 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Okun.

Okun discloses a main housing including a plurality of wheels (fig. 1, #12,22,16,14).

Okun discloses a suction generator (fig. 1, #30).

Okun discloses an agitator section pivotally mounted to the housing (fig. 1, #184,188,172,44).

With respect to claim 18, Okun discloses means for biasing the agitator section toward a surface (fig. 1, #190).

With respect to claim 28, the apparatus of Okun inherently provides the claimed method.

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 3-4, 16, 20-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen et al. as applied to claim 2 above, and further in view of Replogle.

Nordeen et al. discloses a similar floor cleaning apparatus however fails to disclose more than one agitators or an agitator drive motor.

Replogle discloses a floor cleaning apparatus with two rotary agitators (fig. 10, #49). It would have been obvious to one of ordinary skill in the art to provide the second agitator or Replogle in Nordeen et al. to allow for the most effective removal of dirt from a surface and into the apparatus.

With respect to claim 4, it would have been obvious to one of ordinary skill in the art to determine the most appropriate number of agitators to in Nordeen et al. in view of Replogle to allow for the most effective removal of dirt from a surface.

With respect to claim 16, Replogle disclose an agitator drive motor carried on a nozzle assembly (fig. 9, #45). It would have been obvious to one of ordinary skill in the art to

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provide the agitator drive motor of Replogle in Nordeen et al. to ensure there is enough power provided to the agitator, independent of the speed of the generator.

With respect to claims 21 and 24, Nordeen et al. discloses the agitator section pivoting about a longitudinal axis (fig. 1, #4).

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen et al..

Nordeen et al. discloses a similar apparatus however fails to disclose the canister assembly having a wheel.

It would have been obvious to one of ordinary skill in the art to determine the most appropriate location of the wheels in Nordeen et al. to allow for the greatest support for the apparatus.

18. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen et al. as applied to claim 1 above, and further in view of Kaffenberger et al..

Nordeen et al. discloses a similar apparatus however fails to disclose at least one wheel adjacent a leading edge of the nozzle assembly.

Kaffenberger et al. discloses a floor cleaning apparatus with at least one wheel adjacent a leading edge of a nozzle assembly having an agitator (fig. 2, unnumbered caster below #2). It would have been obvious to one of ordinary skill in the art to provide the wheel of Kaffenberger et al. in Nordeen et al. to prevent the nozzle from becoming stuck to a surface.

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19. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen et al. as applied to claim 15 above, and further in view of Freiheit.

Nordeen et al. discloses a similar apparatus however fails to disclose a gear box assembly.

Freiheit discloses a floor cleaning apparatus that uses a belt and gear box assembly to transmit power from a generator to a rotary agitator (fig. 6, #74,70,60,71). It would have been obvious to one of ordinary skill in the art to provide the gear assembly of Freiheit in Nordeen et al. to provide for the most effective transmission of power with the least chance of slippage.

20. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen et al. as applied to claim 19 above, and further in view of Kemnitz.

Nordeen et al. discloses a similar apparatus however fails to disclose a pair of brackets.

Kemnitz disclose a floor cleaning apparatus having a pivotal agitator mounted by way of brackets (fig. 3). It would have been obvious to one of ordinary skill in the art to provide the brackets of Kemnitz in Nordeen et al. to provide a rigid mounting that may not experience vibrations from the belt.

With respect to claims 26-27, it would have been obvious to one of ordinary skill in the art to determine the most appropriate way to mount the agitator of Nordeen et al. to the bracket of Kemnitz to allow for pivoting without effecting rotation of the agitator.

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21. Claims 3-4, 16, 20-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegelin et al. as applied to claim 2 above, and further in view of Replogle.

Wegelin et al. discloses a similar floor cleaning apparatus however fails to disclose more than one agitators or an agitator drive motor.

Replogle discloses a floor cleaning apparatus with two rotary agitators (fig. 10, #49). It would have been obvious to one of ordinary skill in the art to provide the second agitator or Replogle in Wegelin et al. to allow for the most effective removal of dirt from a surface and into the apparatus.

With respect to claim 4, it would have been obvious to one of ordinary skill in the art to determine the most appropriate number of agitators to in Wegelin et al. in view of Replogle to allow for the most effective removal of dirt from a surface.

With respect to claim 16, Replogle disclose an agitator drive motor carried on a nozzle assembly (fig. 9, #45). It would have been obvious to one of ordinary skill in the art to provide the agitator drive motor of Replogle in Wegelin et al. to ensure there is enough power provided to the agitator, independent of the speed of the generator.

With respect to claims 21 and 24, Wegelin et al. discloses the agitator section pivoting about a longitudinal axis (fig. 2A, #54).

22. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wegelin et al.. Wegelin et al. discloses a similar apparatus however fails to disclose the canister assembly having a wheel.

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It would have been obvious to one of ordinary skill in the art to determine the most appropriate location of the wheels in Wegelin et al. to allow for the greatest support for the apparatus.

23. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegelin et al. as applied to claim 1 above, and further in view of Kaffenberger et al..

Wegelin et al. discloses a similar apparatus however fails to disclose at least one wheel adjacent a leading edge of the nozzle assembly.

Wegelin et al. discloses placing a wheel at a front of a nozzle ( col. 5, line 65-col. 6, line 2). Kaffenberger et al. discloses a floor cleaning apparatus with at least one wheel adjacent a leading edge of a nozzle assembly having an agitator (fig. 2, unnumbered caster below #2). It would have been obvious to one of ordinary skill in the art to provide the wheel of Kaffenberger et al. in Wegelin et al. to prevent the nozzle from becoming stuck to a surface.

24. Claims 14-15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wegelin et al. as applied to claim 13 above, and further in view of Freiheit.

Wegelin et al. discloses a similar apparatus however fails to disclose a belt or gear box assembly.

Freiheit discloses a floor cleaning apparatus that uses a belt and gear box assembly to transmit power from a generator to a rotary agitator (fig. 6, #74,70,60,71). It would have been obvious to one of ordinary skill in the art to provide the belt or gear assembly of

Freiheit in Wegelin et al. to provide for a known way of transmitting power from a generator to an agitator.

### ***Double Patenting***

25. Applicant is advised that should claims 19-22 be found allowable, claims 22-24 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Conclusion***

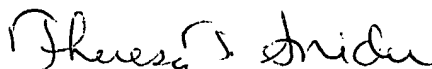
26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peacock et al. discloses a nozzle assembly having an agitator section pivotally mounted to a base section. Nordeen discloses a floor cleaning apparatus having two rotary agitators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277. The examiner can normally be reached on Monday-Friday (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Theresa T. Snider  
Primary Examiner  
Art Unit 1744

9/15/06